

ANH VU NGUYEN,	)	
	)	
Petitioner,	)	CASE NO. C08-1580RSL
	)	
v.	)	
	)	
TIMOTHY WINGLER,	)	ORDER DENYING SECOND
	)	AMENDED PETITION FOR
Respondent.	)	WRIT OF HABEAS CORPUS
	)	

- (1) Except as noted below, the Court adopts the Report and Recommendation.
- (2) Petitioner's second amended petition (Dkt. # 27) is DENIED and this action is DISMISSED with prejudice.
- (3) As of December 1, 2009, the district court is required to consider whether a certificate of appealability should issue at the time it enters a final order adverse to the petitioner. Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts. To obtain a certificate of appealability, the

petitioner must make a substantial showing of the denial of a constitutional right. “Obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor.” Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983). Rather, he must demonstrate that the resolution of the habeas petition is debatable among reasonable jurists or that the issues presented were “adequate to deserve encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). Where a petition is dismissed on procedural grounds, the Court must determine whether “jurists of reason” would debate (1) whether the petition states a valid claim of the denial of a constitutional right and (2) whether the district court’s procedural ruling was correct. Slack, 529 U.S. at 484.

(4) The Court finds that the dismissal of petitioner’s first, fourth, sixth, thirteenth, and seventeenth grounds for relief are debatable among reasonable jurists and that these claims deserve to proceed further. These claims are, therefore, appealable under the Antiterrorism and Effective Death Penalty Act of 1996 . The Court’s rejection of petitioner’s second, third, fifth, seventh, eighth, ninth, tenth, eleventh, twelfth, fourteenth, fifteenth, and sixteenth grounds for relief is not debatable and should not be the subject of an appeal.

(5) The Clerk is directed to send copies of this Order to petitioner, to counsel for respondent, and to Judge Theiler.

Dated this 24th day of February, 2010.



Robert S. Lasnik  
United States District Judge